



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed September 28, 2015, Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephonic hearing was held on November 4, 2015, at Oconto, Wisconsin.

The issue for determination is whether the Division correctly determined that a burial vault paid for by the petitioner's funeral [REDACTED] was a funeral and burial rather than a cemetery expense.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Income maintenance specialist
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Oconto County. She died on September 2, 2015.
2. [REDACTED] handled the petitioner's funeral and burial arrangements.

3. The petitioner was buried in Brookside Cemetery which is not a small and rural cemetery.
4. The cemetery the petitioner is buried in requires but does not provide burial vaults or grave liners.
5. The burial vault cost \$1,100.
6. The cemetery opened and closed the petitioner's grave. It charged \$525 for this service, which [REDACTED] paid.
7. [REDACTED]'s funeral and burial charges exceeded \$4,500, even without the charge for the burial vault.
8. [REDACTED] seeks reimbursement for \$1,100 in cemetery costs. The Department reimbursed [REDACTED] \$525 for the cost of opening and closing the petitioner's grave, but did not provide any other reimbursement.
9. The Department sent a September 22, 2015 notice to the petitioner's provider, [REDACTED] stating that the petitioner's request for reimbursement of funeral and burial charges under the Wisconsin Funeral and Cemetery Aids Program for the decedent, [REDACTED] was approved for only \$525 because the total funeral charges exceed \$4,500 and no special circumstances are established by the petitioner. The \$525 is the cash advanced by the funeral [REDACTED] Brookside Cemetery.

DISCUSSION

Wisconsin law requires the Department to pay up to \$1,500 of the funeral and burial expenses and up to \$1,000 of the cemetery expenses of certain indigent recipients of public benefits. Wis. Stat. § 49.785(1). The law is fairly simple. It lists the categories of aid that make a person eligible for the program. Wis. Stat. § 49.785(1c). In addition it indicates that the Department does not have to pay for cemetery expenses if the total amount of those expenses exceeds \$3,500, does not have to pay for funeral and burial expenses if the total amount of those expenses exceeds \$4,500, and does not have to provide any reimbursement if the claim is not submitted within one year. Wis. Stat. § 49.785 (1m). The law says nothing about what constitutes a cemetery expense and what constitutes a funeral and burial expense, indicating only that payments under the program shall be made "to persons designated by the department."

[REDACTED], provided the petitioner's funeral services for the petitioner, [REDACTED]. Neither party disputes that she qualified for the program. [REDACTED] submitted a claim to the Funeral and Cemetery Aids Program requesting the total funeral home reimbursement of \$5,345 (\$4,245 for funeral expenses + \$1,100 grave liner). Those total expenses exceeded the \$4,500 expense cap. The actual cemetery expenses it claimed were \$525 which Brookside Cemetery charged it for opening and closing the grave and \$1,100 for the vault the cemetery required but did not provide. The program determined that the burial vault was a funeral expense because [REDACTED] is a funeral home rather than a cemetery or crematory. (As will be discussed later, the program allows funeral homes to claim this expense if the person is buried in a small, rural cemetery that does not provide burial vaults; it determined that the cemetery the petitioner was buried in did not qualify for this exemption.) It reimbursed [REDACTED] only for the \$525 cost of opening and closing the grave. [REDACTED] seeks the full funeral home reimbursement.

The program relies upon an attorney general's opinion and its own program manual for its decision. In 1990, Wisconsin's attorney general was asked whether a grave liner was a funeral or cemetery expense. The attorney general noted that "[b]oth categories defy precise definition because the statutory language is couched in broad terms" and the goods and services often overlap. 79 *Op. Att'y Gen.* 164, 164 (1990). Because there is no guidance in the statute and the services overlap, the attorney general found that the "most plausible construction of section 49.30 [now § 49.785] is to characterize a good or service a funeral and burial expense if provided by a funeral home and a cemetery expense if provided by a cemetery." 79 *Op. Att'y Gen.* 164, 165 (1990). The Department's policy reflects this opinion but includes an exception.

The policy along with the exception are found in the *Wisconsin Funeral and Cemetery Aids Program Manual*, § 2.4.1., which states:

If the good/service is provided by a funeral home (including cremation), consider the expense to be a funeral expense. If the good/service is provided by a cemetery or crematory, consider the expense to be a cemetery expense. If a good/service is provided by an entity other than a funeral home, cemetery, or crematory and cash advanced by the funeral home, apply the cash advance policy in 2.5.4.

Exception: There is one exception to this policy. Many small, rural cemeteries rely on a funeral home to provide certain goods and services on their behalf (e.g. The outer burial vault, opening and closing of the grave, etc.). See Example 12.

Under this circumstance, and only this circumstance, count the good or service as a cemetery expense, even though it is provided by a funeral home. Funeral homes should document this circumstance on the "Statement of Funeral Goods and Services Selected." If there is no indication that this is indeed the case, do not apply the policy exception and, instead, count the good or service as a funeral expense.

A representative from Brookside Cemetery (Lyle) stated to a Department representative that the cemetery here was not small and rural. Mr. [REDACTED] was unable to provide any reliable evidence to refute that Brookside Cemetery was not small and rural per § 2.4.1 above. The issue in this case is not the cemetery's location or size but whether it pays for the burial vault.

During the hearing, Mr. [REDACTED] argued that the exception in § 2.4.1. should apply here because its situation is similar to the situation of funeral homes dealing with small, rural cemeteries: the cemetery requires the funeral home to provide the vault but does not pay for it. He further argued that even though the funeral home sold the grave liner, in his opinion such sale should nevertheless remain a "cemetery expense," or be "reclassified as a "cemetery expense." He added that grave liners sold by the funeral home to cemeteries that do not provide them have ALWAYS been accepted as a "cemetery expense in the past."

Mr. [REDACTED]'s argument is understandable. However, the Department representative, [REDACTED] correctly responded to Mr. [REDACTED]'s arguments based upon current policy both during the hearing and in her November 6, 2015 closing argument to DHA. However, even more important to this case is that this same issue has been addressed in a prior Final decision by the DHS Secretary in [REDACTED], issued March 12, 2015. In that final decision, the Secretary concluded in pertinent part that: "...While the cost of the outer burial vault may validly be claimed for reimbursement, it must be considered a funeral and burial expense, not a cemetery expense. Since the funeral and burial expenses already exceed the upper limit, even without consideration of the cost of the outer burial vault, the petitioner is not entitled to any further reimbursement from the program." This ALJ has no legal authority to not follow the precedent established in a Final decision by the Secretary's Office.

Thus, in the instant case, the petitioner's request for funeral/burial expense reimbursement must be denied due to being over the \$4,500 cap. The burial vault is considered a funeral/burial expense not a cemetery expense because the cemetery is not both small and rural and the exception in WFCAP Handbook, 2.4.1 does not apply. See also DHS Secretary final decision in [REDACTED]. Accordingly, based upon the above, I must conclude that the Division correctly determined that a grave liner/burial vault paid for by the petitioner's funeral home was a funeral and burial rather than a cemetery expense.

CONCLUSIONS OF LAW

1. The expense of the burial vault must be considered a funeral and burial expense because it was provided by the funeral director and the "small and rural" cemetery exception does not apply.
2. The total funeral and burial expenses provided on the petitioner's behalf exceeds \$4,500.

3. The Department correctly approved only \$525 of funeral expenses for [REDACTED] because total funeral charges exceed \$4,500 because of burial vault expense.
4. [REDACTED] is not entitled to any additional reimbursement for the expense it expended on behalf of the petitioner, for her funeral burial vault.

THEREFORE, it is

ORDERED

The petitioner for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of December, 2015.

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 16, 2015.

Division of Health Care Access and Accountability
Wisconsin Funeral and Cemetery Aids Program - DHS